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BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE DENIAL OF THE  
APPLICATION FOR PERMIT TRANSFER OF  
HIAWATHA COAL COMPANY, INC. FOR THE  
BEAR CANYON MINE C/015/0025,  
TASK ID #3215 BY THE DIVISION OF  
OIL, GAS AND MINING DATED APRIL 2, 2009.

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DOCKET NO. 2009-007 CAUSE NO. C/015/025B  
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TAKEN AT: Department of Natural Resources  
1594 West North Temple, Room 1040  
Salt Lake City, Utah

DATE: Wednesday, December 8, 2010

TIME: 9:15 a.m. to 9:22 a.m.

REPORTED BY: Michelle Mallonee, RPR

ATKINSON BAKER COURT REPORTING  
JOB #A403309

APPEARANCES

BOARD OF OIL, GAS AND MINING:

Douglas E. Johnson, Chairman  
Ruland J. Gill, Jr.  
Jake Y. Harouny  
James T. Jensen  
Kelly L. Payne  
Samuel C. Quigley  
Jean Semborski (Excused)

DIVISION OF OIL, GAS AND MINING:

John R. Baza, Director  
Dana Dean, Associate Director, Mining  
John Rogers, Associate Director, Oil and Gas  
Jim Springer, Public Information Officer  
Steve Schneider, Administrative Policy Coordinator  
Julie Ann Carter, Secretary to the Board

ASSISTANT ATTORNEYS GENERAL:

Fred Donaldson - Division Attorney  
Steve Alder - Division Attorney  
Emily Lewis - Division Attorney  
Michael S. Johnson - Board Attorney

FOR HIAWATHA COAL COMPANY:

PETER W. GUYON, ESQ.  
LAW OFFICES OF PETER W. GUYON  
10 Exchange Place  
Suite 614  
Salt Lake City, Utah 84111

FOR THE DIVISION OF OIL, GAS, AND MINING:

STEVEN F. ALDER, ESQ.  
UTAH ATTORNEY GENERAL'S OFFICE  
Natural Resources Division  
1594 West North Temple  
Suite 300  
Salt Lake City, Utah 84116

1 Docket No. 2009-007 Cause No. C/015/025B

2 Wednesday, December 8, 2010

3 (The proceedings began at 9:15 a.m.)

4 CHAIRMAN JOHNSON: Good morning, everybody.

5 Welcome you to the December 2010 hearing of the Utah  
6 Board of Oil, Gas and Mining. We're going to be starting  
7 the formal part of the agenda today.

8 If I could ask everyone to take their seats, I  
9 would appreciate that.

10 Good morning. Does that work?

11 We have nine matters on the docket today.

12 Actually, some of those are continued, and we have one  
13 that's withdrawn. So if everybody will bear with me, I'm  
14 going to go through the items that will be continued just  
15 in the event that somebody is here specifically just for  
16 one of those items so that you don't have to be here all  
17 day just to hear that it's not going to be heard. And  
18 then we will start, actually, with Agenda Item No. 3,  
19 which will be the first one that we will hear today.

20 The first item is Docket No. 2009-007 Cause No.  
21 C/015/025B - In the Matter of the Denial of the  
22 Application for Permit Transfer of Hiawatha Coal Company,  
23 Inc., for the Bear Canyon Mine C/015/0025, Task I.D.  
24 No. 3215 By the Division of Oil, Gas and Mining Dated  
25 April 2, 2009.

1                   We're going to continue that matter.

2                   MR. JENSEN: I have a question of Mr. Alder as  
3                   to why that matter shouldn't be dismissed without  
4                   prejudice. It's been on the agenda now for over a year.

5                   MR. ALDER: Yes. Mr. Chairman, Mr. Jensen,  
6                   Steve Alder for the Division. Peter Guyon is here  
7                   representing Hiawatha to make the motion to continue.

8                   This is different than matters that are  
9                   typically filed before the Board asking you to take a  
10                  particular action. This is an appeal by Mr. Guyon's  
11                  client, Hiawatha, of the cessation order that was issued,  
12                  as you said, almost two years ago. And the matter has  
13                  been on appeal for more than a year.

14                  There has been a substantial amount of dispute  
15                  about the ownership of this mine and the obligations to  
16                  provide bonding that have been holding everything up in  
17                  the bankruptcy court. That was concluded, and we've  
18                  advised the Board about that in the past on numerous  
19                  occasions. And you've been very patient, and I  
20                  understand the reason for the request.

21                  The problem, as I see it, is that because this  
22                  is an appeal of an enforcement matter, it needs to be  
23                  heard. If Mr. Guyon were to withdraw it, then I think he  
24                  would waive his rights to appeal it and refile it, unless  
25                  we had some sort of stipulation to that effect.

1           MR. JENSEN: Can't you stipulate to a dismissal  
2 without prejudice without waiving any of their rights so  
3 that this just doesn't clutter up our calendar month,  
4 after month, after month?

5           MR. ALDER: I'm concerned about doing that  
6 without also putting into the stipulation that we would  
7 be preserving and not waiving any of the rights to  
8 pursue, timely, the enforcement action. And so I just  
9 thought it would be easier to continue it.

10           We thought we'd have it resolved. And  
11 unfortunately, the Tenth Circuit, on the appeal of the  
12 bankruptcy matter, there was some hope --

13           MR. GUYON: There was.

14           MR. ALDER: -- brief into the matter. So we  
15 weren't able to resolve it. And I apologize for not  
16 having -- we have such a full docket. We just didn't  
17 think it was appropriate to try and pursue it at the last  
18 minute.

19           MR. JENSEN: Peter, my question is: If the  
20 stipulation preserved all of your rights and you agreed  
21 that the Division didn't waive any of their rights, is  
22 there any reason why this can't be dismissed without  
23 prejudice?

24           MR. GUYON: To tell you the truth, we haven't  
25 really considered that part of it because as we've gone

1 on, we've sort of been driven, to a great extent, by the  
2 underlying bankruptcy and a number of appeals that have  
3 come out of that bankruptcy proceeding. And so I  
4 guess -- I mean, we'd certainly be willing to consider  
5 any resolution of it. It may not appear that way to the  
6 Board, but we really have been concerned and mindful of  
7 the fact that it has been continued a number of times.

8 Our most recent stipulation between Mr. Alder  
9 and I had been that we would use our best efforts from  
10 this point forward. We'd hoped that the Board would  
11 continue this until its February meeting, which would  
12 give us 60 days to try to do one last effort at trying to  
13 resolve this. There's a matter of a potential fine, and  
14 all that kind of thing.

15 MR. JENSEN: How about if we do this: How about  
16 if we agree to the continuation to February, but short of  
17 either a stipulation from you, to dismiss -- that if  
18 we're out at February, that this is going to get  
19 dismissed. So what I'm trying to tell you is: Work out  
20 a stipulation.

21 MR. GUYON: Right. Either that, or it's going  
22 to go in February. I mean, that's what you are saying.  
23 In fact, that was our stipulation that Mr. Alder and I  
24 had agreed to because we know that -- we don't want to  
25 push the patience of the Board past the point that we

1       have.   So that would be fine for us.

2               CHAIRMAN JOHNSON:   Okay.   Thank you.   Then we'll  
3       continue this at this point in time until the February  
4       hearing.

5               MR. ALDER:   Thank you.

6               MR. GUYON:   Thank you.

7               Is there a specific date and time for that  
8       February hearing?

9               MR. ALDER:   Yeah, I'll give it to you.

10              MR. GUYON:   Okay.   I'll get it from Mr. Alder.

11              MS. CARTER:   That would be February 23, 2010  
12       (sic).

13              CHAIRMAN JOHNSON:   Okay.   So this matter is  
14       continued until February 23.

15              (The matter was concluded at 9:22 a.m.)

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CERTIFICATE

State of Utah )  
ss.  
County of Salt Lake )

I, Michelle Mallonee, a Registered  
Professional Reporter and Notary Public in and for the  
State of Utah, do hereby certify:

That the proceedings of said matter was  
reported by me in stenotype and thereafter transcribed  
into typewritten form;

That the same constitutes a true and correct  
transcription of said proceedings so taken and  
transcribed;

I further certify that I am not of kin or  
otherwise associated with any of the parties of said  
cause of action, and that I am not interested in the  
event thereof.



Michelle Mallonee, RPR, CSR